



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

[File No. 151 0204]

DaVita, Inc., RV Management Corp., Renal Ventures Partners, LLC, Renal Ventures Limited, LLC, and Renal Ventures Management, LLC; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

DATES: Comments must be received on or before April 27, 2017.

ADDRESSES: Interested parties may file a comment at

<https://ftcpublic.commentworks.com/ftc/davitarenalconsent> online or on paper, by following the

instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION**

section below. Write “In the Matter of DaVita, Inc., RV Management Corp., Renal Ventures Partners, LLC, Renal Ventures Limited, LLC, and Renal Ventures Management, LLC., File No. 151-0204” on your comment and file your comment online at

<https://ftcpublic.commentworks.com/ftc/davitarenalconsent> by following the instructions on the web-based form. If you prefer to file your comment on paper, write “In the Matter of DaVita, Inc., RV Management Corp., Renal Ventures Partners, LLC, Renal Ventures Limited, LLC, and Renal Ventures Management, LLC., File No. 151-0204” on your comment and on the envelope,

and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Lisa DeMarchi Sleight (202-326-2535), Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR § 2.34, notice is hereby given that the above-captioned consent agreement containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 28, 2017), on the World Wide Web, at <http://www.ftc.gov/os/actions.shtm>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before April 27, 2017. Write “In the Matter of DaVita, Inc., RV Management Corp., Renal Ventures Partners, LLC, Renal Ventures Limited, LLC, and Renal Ventures Management, LLC., File No. 151-0204” on your comment. Your comment - including your name and your state - will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <https://www.ftc.gov/policy/public->

comments. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which . . . is privileged or confidential," as discussed in Section 6(f) of the FTC Act, 15 U.S.C. § 46(f), and FTC Rule 4.10(a)(2), 16 CFR § 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR § 4.9(c).¹ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at

¹ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR § 4.9(c).

<https://ftcpublic.commentworks.com/ftc/davitarenalconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write “In the Matter of DaVita, Inc., RV Management Corp., Renal Ventures Partners, LLC, Renal Ventures Limited, LLC, and Renal Ventures Management, LLC., File No. 151-0204” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before April 27, 2017. You can find more information, including routine uses permitted by the Privacy Act, in the Commission’s privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) from DaVita, Inc. (“DaVita”). The purpose of the Consent Agreement is to remedy the anticompetitive effects resulting from DaVita’s purchase of Renal Ventures Management, LLC from Renal Ventures Limited, LLC, which is owned by RV Management Corp. and Renal Ventures Partners, LLC (together, “Renal

Ventures”). Under the terms of the Consent Agreement, DaVita is required to divest seven dialysis clinics in seven markets across the United States.

The Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or make final the Decision and Order (“Order”).

The Transaction

Pursuant to an agreement dated August 17, 2015, DaVita proposes to acquire all issued and outstanding equity interests in Renal Ventures in a transaction valued at approximately \$358 million. The Commission’s Complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by substantially lessening competition for the provision of outpatient dialysis services in seven markets.

The Respondents

Headquartered in Denver, Colorado, DaVita is the second-largest provider of outpatient dialysis services in the United States. DaVita operates or manages 2,251 outpatient dialysis clinics in forty-six states and the District of Columbia at which approximately 180,000 end stage renal disease (“ESRD”) patients receive treatment. In 2015, DaVita’s revenues were approximately \$13.8 billion.

Renal Ventures, headquartered in Lakewood, Colorado, is a privately held company and the seventh-largest provider of outpatient dialysis services in the United States. Renal Ventures

operates thirty-six dialysis centers, providing dialysis services to approximately 2,300 patients in six states. In 2015, Renal Ventures' revenues were approximately \$161 million.

The Relevant Product and Structure of the Markets

Outpatient dialysis services is the relevant product market in which to assess the effects of the proposed transaction. For patients suffering from ESRD, dialysis treatments are a life-sustaining therapy that replaces the function of the kidneys by removing toxins and excess fluid from the blood. Kidney transplantation is the only alternative to dialysis for ESRD patients. However, the wait-time for donor kidneys—during which ESRD patients must receive dialysis treatments—can exceed five years. Additionally, many ESRD patients are not viable transplant candidates. As a result, ESRD patients have no alternative to dialysis treatments. Unless hospitalized, ESRD patients must obtain dialysis treatments from outpatient dialysis clinics.

Because most ESRD patients receive outpatient dialysis treatment three times per week in sessions lasting between three and five hours the relevant geographic markets are local and limited by the travel distance from patients' homes. ESRD patients are often very ill and suffer from multiple health problems, making travel further than thirty miles or thirty minutes very difficult. As a result, competition among dialysis clinics occurs at a local level, corresponding to metropolitan areas or subsets thereof. The exact contours of each market vary depending on traffic patterns, local geography, and the patients' proximity to the nearest center.

Competitive Effects of the Acquisition

Each of the seven geographic markets identified in the Complaint is highly concentrated. In each of the affected markets, the proposed acquisition would cause the number of providers to drop from three to two or cause a merger to monopoly, and the post-acquisition HHI levels to exceed 5,000, and in the three-to-two provider markets, changes in their HHIs greater than 200.

The high post-acquisition concentration levels, along with the elimination of the head-to-head competition between DaVita and Renal Ventures, suggest the proposed combination likely would result in higher prices for outpatient dialysis services in each geographic market. In addition, market participants compete for patients on a number of quality measures—including quality of facilities, wait times, operating hours, and location. The proposed combination likely also would result in diminished service and quality for patients in each market.

Entry

Entry into the outpatient dialysis services markets identified in the Commission’s Complaint is not likely to occur in a timely manner at a level sufficient to deter or counteract the likely anticompetitive effects of the proposed transaction. By law, each dialysis clinic must have a nephrologist medical director, and most dialysis clinics have long-term (seven to ten year) contracts with nephrologist medical directors, that also include non-competes. As a practical matter, medical directors also serve as the primary source of referrals and are essential to a clinic’s success. The relative shortage and lack of available nephrologists, particularly those with an established referral stream, is a significant barrier to entry into each of the relevant markets. These obstacles make entry in the affected markets more challenging and less likely to avert the anticompetitive effects of the transaction.

The Consent Agreement

The Consent Agreement remedies the proposed acquisition’s anticompetitive effects in seven markets where both DaVita and Renal Ventures operate dialysis clinics by requiring DaVita to divest seven outpatient dialysis clinics to PDA-GMF Holdco LLP, a joint venture between Physicians Dialysis and GMF Capital LLC (“PDA”). Physicians Dialysis has been in

business since 1990 and currently operates several outpatient dialysis clinics. The Commission is satisfied that PDA is a qualified acquirer of the divested assets.

As part of the divestitures, DaVita is required to obtain the agreement of the medical director affiliated with each divested clinic to continue providing physician services after the transfer of ownership to the buyer. Similarly, the Consent Agreement requires DaVita to obtain the consent of all lessors necessary to assign the leases for the real property associated with the divested clinics to the buyer. These provisions ensure that the buyer will have the assets necessary to operate the divested clinics in a competitive manner.

The Consent Agreement contains several additional provisions designed to help ensure the continued competitiveness of the divested clinics. First, the Consent Agreement provides the buyer with the opportunity to interview and hire employees affiliated with the divested clinics and prevents DaVita from offering these employees incentives to decline the buyer's offer of employment. This helps ensure the buyer has access to patient care and supervisory staff familiar with the clinics' patients and the local physicians. Second, the Consent Agreement prevents DaVita from contracting with the medical directors affiliated with the divested clinics for three years, to prevent DaVita from potentially limiting the competitiveness of the divested clinics. Third, to ensure continuity of patient care and records as the buyer implements its quality care, billing, and supply systems, the Consent Agreement requires DaVita to provide transition services for a period up to twenty-four months. Firewalls and confidentiality agreements will prevent the exchange of competitively sensitive information. Fourth, the Consent Agreement requires DaVita to provide the buyer with a license to Renal Ventures' policies, procedures, and medical protocols, as well as the option to obtain and use DaVita's

medical protocols, policies, and procedures, to help with continuity of care for the divested clinics' patients.

The Consent Agreement requires DaVita to provide notice to the Commission prior to any acquisitions of dialysis clinics in the markets addressed by the Consent Agreement to ensure that subsequent acquisitions do not adversely impact competition in those markets or undermine the remedial goals of the proposed order. Finally, the Consent Agreement allows the Commission to appoint a monitor to oversee DaVita's compliance with the Consent Agreement.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order, or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark
Secretary.

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